

A distinction is to be drawn between a negligent act or omission which gives rise to civil or criminal responsibility. In the latter case the test was laid down in the Court of Criminal Appeal by the Lord Chief Justice in *Rex v. Bateman*⁽⁹⁾, quoted in *Gopal Rajaram v. Public Prosecutor*⁽¹⁰⁾ as follows:—

"In explaining to juries the test which they should apply to determine whether the negligence in the particular case amounted or did not amount to a crime, the Judges have used many epithets such as 'culpable' 'criminal' 'gross' 'wicked' 'clear' 'complete'. But whatever epithet may be used and whether an epithet be used or not in order to establish criminal liability, the facts must be such that, in the opinion of the jury, the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment."

See also *Cheow Keok v. Public Prosecutor*⁽¹¹⁾.

In my opinion, the evidence tends to show that the appellant when swerving to the left misjudged the speed at which the complainant was travelling and thought that he could safely turn into the compound before the complainant reached the point of inter-section. This does not amount to negligence for which he is to be held criminally liable.

The appeal must be allowed and the conviction and sentence set aside. The fine, if paid, is to be refunded to the appellant.

Solicitors for the appellant: S. Seenivasagam & Sons.

LOW YEO FOONG & ORS. v. CHOP THONG CHEONG.

[O.C.J. (Buhagiar, J.) March 27, 1952]

[K. L. — Civil Suit No. 204 of 1951]

Landlord and tenant—Ejectment—Whether Court can interfere with Certificate given by the Rent Assessment Board under s. 13(1)(m) of the Control of Rent Ordinance, 1948, as amended by s. 11 of Ordinance No. 61 of 1949.

The plaintiffs (owners) were granted a Certificate by the Rent Assessment Board in terms of section 13(1)(m) of the Control of Rent Ordinance, 1948, to the effect that they intended to demolish the premises occupied by the defendant for the purpose of re-building and that in the opinion of the Board it was in the public interest that they should be permitted so to do. The plaintiffs were also given permission to apply to an appropriate Court for the ejectment of their tenant, the defendant, which they now apply, to do.

Held: the Court could not interfere with the Certificate of the Rent Assessment Board which was final and binding and therefore the defendant must vacate the premises.

Cases referred to:—

- (1) *Smith v. Primavesi* (1921) W.N. 291.

- (2) *Carltons Ltd. v. Commissioners of Works & Ors.* (1943) 2 All E.R. 560.

- (3) *Attorney-General v. A. W. Gamage Ltd.* (1949) 2 All E.R. 732.

ACTION FOR EJECTMENT.

Cur. Adv. Vult.

Buhagiar, J.:—The only point to be decided in this case was whether this Court could interfere with the certificate given by the Rent Assessment Board under paragraph (m) of sub-section (1) of section 13 of the Control of Rent Ordinance, 1948 (M.U. No. 6 of 1948). That section (as amended by section 11 of Ordinance No. 61 of 1949) provides as follows:—

"No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely—

- (m) where the President or Chairman of the Board has certified that the Board is satisfied that the owner of the premises intends to demolish them for the purpose of rebuilding and in its opinion it is in the public interest that he should be permitted so to do:

Provided that an order or judgment shall not be made or given under this paragraph unless the Court is satisfied that the owner of the premises has complied with any order or conditions which the Board may have seen fit to make or impose."

The plaintiffs are the owners of premises known as No. 53, Cross Street, Kuala Lumpur. The defendant is the tenant of those premises.

On the 9th March, 1951, the plaintiffs applied to the Rent Assessment Board for the Municipal Area of Kuala Lumpur praying for:—

- (a) an order granting them permission to apply to the appropriate Court at Kuala Lumpur for the ejectment of the defendant from the said premises; and
(b) for a certificate in terms of paragraph (m) of subsection (1) of section 13 of the Control of Rent Ordinance.

On the 2nd June, 1951, the Board granted permission as in paragraph (a) above and a certificate as follows:—

"I, PAWAN TEH, President of the Rent Assessment Board for the Municipal Area of Kuala Lumpur HEREBY CERTIFY that the Board is satisfied that Low Yeo Foong, Chong Pong Yew alias Yong Pong Yew, Loh Hin Nen, Low Leong Fiew and Wong Fong Yen intend to demolish the premises known as 53 Cross Street, Kuala Lumpur, for the purpose of rebuilding and that in the opinion of the said Board it is in the public interest that the said Low Yeo Foong, Chong Pong Yew alias Yong Pang Yew, Loh Hin Nen, Low Leong Fiew and Wong Fong Yen be permitted to do so".

I considered that the Court could not interfere with this certificate; it was final and binding. In *Smith v. Primavesi*⁽¹⁾ it was held that a certificate under section 5(1) (i) (ii) of the Increase of Rent, etc. (Restriction) Act, 1920, was final and conclusive and when produced the Court ought to act upon it. It is an established principle that where a discretion is conferred on an authority by statute the Courts

cannot, in the absence of allegation of bad faith, interfere with the exercise of that discretion. *Carltons Ltd. v. Commissioners of Works & Ors.*⁽²⁾ and *Attorney-General v. A. W. Gamage Ltd.*⁽³⁾. In my judgment paragraph (m) of sub-section (1) of section 13 of the Control of Rent Ordinance, 1948, confers a discretion on the Rent Assessment Board both as regards the intention of the owner of premises to demolish the premises for the purpose of rebuilding and as its being in the public interest that he should be permitted to do so. There was no allegation of bad faith in this case.

I therefore, gave judgment for the plaintiffs with costs and ordered that vacant possession of the premises be delivered on or before the 15th May, 1952.

Judgment for the plaintiffs.

Solicitors for the plaintiffs: *Shearn, Delamore & Co.*
Solicitor for the defendant: *Ong Huck Lim.*

**P. N. MOHAMED IBRAHIM v. YAP CHIN
HOCK & ANOR.**

[A. C. J. (Wilson, J.) January 29, 1954]

[K. L. — Civil Appeal No. 958 of 1953]

Practice and procedure — Subordinate Courts Rules, 1950, O.10, r. 3 — Failure to file defence within time.

Landlord and tenant — Ejectment — Certificate given in terms of s. 13(1)(m) of the Control of Rent Ordinance, 1948 — Whether Court hearing Magistrate's Appeal bound to follow decision (on a similar certificate issued) given by a High Court with original jurisdiction.

Summons was served on the appellant (defendant) on October 10, 1953 for hearing on October 16, 1953. The appellant did not file any defence but appeared in person on October 16, and admitted the facts set out in the plaint. The learned President then proceeded to give judgment. The appellant appealed on the ground that the President should have extended time for filing the defence by virtue of O. 8, r. 6.

It was further argued that although the Rent Assessment Board had issued a Certificate in terms of section 13(1)(m) of the Control of Rent Ordinance, 1948, to the effect that the respondents (plaintiffs) were entitled to demolish the premises occupied by the appellant in the public interest, it was necessary for the learned President himself to hear evidence on this point and come to his own conclusion as to whether it was in the public interest or not.

Held: (1) even if O. 8, r. 6 had been complied with by the respondents, the appellant had been in default in filing a defence under O. 10, r. 3 and therefore there was no merit in the contention that the learned President should have extended time for filing of the defence; (2) the Court was bound by the decision given in *Low Yeo Foong & Ors. v. Chop Thong Cheong*⁽¹⁾ where it was held that the Court could not interfere with the Certificate of the Rent Assessment Board which was final and binding, as the decision given there was a decision of the same Court or of a Court of co-ordinate jurisdiction, and therefore the appellant must vacate the premises.

[Editorial Note: Decisions of co-ordinate jurisdiction — Lord Goddard, C.J. in *Huddersfield Police Authority v. Watson* (1947) 2 All E.R. 193 at p. 196

said: "... the modern practice is that a Judge of first instance, although, as a matter of judicial comity, he would usually follow the decision of another Judge of first instance unless he was convinced that that judgment was wrong, certainly is not bound to follow the decision of a Judge of equal jurisdiction. A Judge of first instance is only bound to follow the decision of the Court of Appeal and the House of Lords and, it may be also, the Divisional Court." His Lordship was considering certain dicta, in which Judges have apparently said that a Court is bound by decisions of a Court of co-ordinate jurisdiction if they are subject to appeal, but not otherwise. In a recent case (*In re House Property & Investment Co. Ltd.* (1953) 3 W.L.R. 1037 at p. 1058) Roxburgh, J. answering the question "What is the duty of a Judge when he is confronted with a series of decisions which are difficult to reconcile?" said: "... if there is a decision which cannot be distinguished from the case before him, even if it is a decision of a Judge of the first instance, a fortiori, of course, if it is a decision of the Court of Appeal or House of Lords, he ought to apply it — expressing maybe his doubts whether it is still good law, but leaving a superior tribunal to overrule it." In *Re Chop Nam Chiang Long* (1927) S.S.L.R. 28, Murison, C.J. referred to an unreported judgment of Barrett-Learned, J. in *Re Chop Ghee Lee* (Bankruptcy No. 362 of 1923) which was a case similar to the one before him. In following the decision of Barrett-Learned, J. the learned Chief Justice said: "As the decision of Barrett-Learned, J. is a decision of the same Court, I follow by courtesy, but not by conviction, the terms of his judgment and reluctantly dismiss the motion".]

Cases referred to:—

- (1) *Low Yeo Foong & Ors. v. Chop Thong Cheong* (1954) M.L.J. 126.
- (2) *Young v. Bristol Aeroplane Co. Ltd.* (1944) 2 All E.R. 293.

MAGISTRATE'S APPEAL, Action for Ejectment.

R. Ramani and Chung Shiu Tett for the appellant (defendant).

C. O. G. Gould for the respondents (plaintiffs).

Cur. Adv. Vult.

Wilson, J.: — This was an action for ejectment. In the Memorandum of Appeal it is stated that the summons was served on the defendant on the 10th day of October, 1952 for hearing on the 16th day of October. Presumably, the date of service was the 10th October, 1953. Order 8 Rule 6 provides that "a summons commencing an action shall be served not less than seven clear days before the return date, unless the Court shall otherwise order." The learned President did not make any order for an earlier trial.

Order 10 Rule 3 provides that "if a defendant desires to defend the whole or any part of the claim he shall, not less than two days before the return date of the summons, or within such further time as the Court may allow, file and caused to be served on each plaintiff a defence." When the case came on for trial on the 16th October, 1953, the defendant had not filed any defence but appeared in person. He was asked by the learned President if he admitted the facts set